

1 **MACDONALD | FERNANDEZ LLP**  
2 IAIN A. MACDONALD (SBN 051073)  
3 RENO F.R. FERNANDEZ III (SBN 251934)  
4 MATTHEW J. OLSON (SBN 265908)  
5 914 Thirteenth Street  
6 Modesto, CA 95354  
7 Telephone: (209) 521-8100  
8 Facsimile: (209) 236-0172

9 Attorneys for Debtor in Possession,  
10 JEFFERY EDWARD ARAMBEL

11 UNITED STATES BANKRUPTCY COURT

12 EASTERN DISTRICT OF CALIFORNIA

13 In Re:

14 JEFFERY EDWARD ARAMBEL,

15 Debtor.

Case No. 18-90029-E-11

Chapter 11

Docket Control No. MF-9

Date: April 19, 2018

Time: 10:30 a.m.

Place: Courtroom 33  
501 I Street, 6<sup>th</sup> Floor  
Sacramento, California

Hon. Ronald H. Sargis

17 **NOTICE OF HEARING ON**  
18 **DEBTOR IN POSSESSION'S MOTION FOR AUTHORITY TO SELL REAL PROPERTY**  
19 **FREE AND CLEAR OF LIENS (HOME RANCH)**

20 NOTICE IS HEREBY GIVEN that on February 28, 2018, JEFFERY EDWARD  
21 ARAMBEL, Debtor in Possession herein, ("Debtor") filed his motion for entry of an order  
22 approving the sale of that certain real property known as "Home Ranch," comprising approximately  
23 180.81 acres of apricot and peach orchards on Needham Road near Stark Road west of Westley,  
24 California (APNs 021-013-025; 021-013-026; 021-013-027; and 021-013-028) (the "Property"),  
25 excluding a certain 3,200 square-foot home and shop built upon the land and the approximately one  
26 acre surrounding it, to Skip Foppiano, an individual residing in California, or his assignee, for the  
27 gross price of \$3,700,000.00, free and clear of liens and other interests pursuant to 11 U.S.C.  
28 § 363(b) and (f). Copies of the Application and its supporting pleadings may be obtained by  
contacting the undersigned, the Clerk of Court, or accessing the Court's ECF system at  
<https://ecf.caeb.uscourts.gov>.

**SUMMARY OF RELIEF SOUGHT**

The proposed sale is subject to the concurrent sale of the Howard Ranch, as described in the  
accompanying Motion for Authority to Sell Real Property Free and Clear of Liens (Howard Ranch)  
for the gross price of \$1,700,000.00. Home Ranch and Howard Ranch are collateral for the same  
claims except for real property taxes. The sum of the gross prices of the proposed sales is  
\$5,400,000.00. \$100,000.00 of the combined purchase prices is comprised of two \$50,000.00

deposits Mr. Foppiano paid in connection with the potential sale of certain other real properties, namely the “Kellner Ranch” and the “Newman Ranch.” The parties dispute whether said deposits are refundable.

### **Estimated Claims**

The Property secures the following estimated claims:

<u>Priority</u>	<u>Claim Holder</u>	<u>Estimated Claim</u>
Tax	Stanislaus County Tax Collector	\$42,640.45
1 <sup>st</sup>	Mid Valley Services, Inc.	\$861,264.44
2 <sup>nd</sup>	Mid Valley Services, Inc.	\$3,296,408.33
3 <sup>rd</sup>	Summit	\$5,378,229.00
4 <sup>th</sup>	EDD	\$20,251.85

### **Estimated Proceeds; Sale Free & Clear of Liens**

The two sales are sufficient to pay Stanislaus County Tax Collector and Mid Valley Services’ claims in full, as follows:

Aggregate Gross Proceeds	\$5,400,000.00
Secured Claims	
Stanislaus County Tax Collector (Both Ranches)	\$79,365.02
Mid Valley Services, Inc. (1 <sup>st</sup> DOT)	\$861,264.44
Mid Valley Services, Inc. (2 <sup>nd</sup> DOT)	\$3,296,408.33
Commissions (Both Sales)	\$216,000.00
Est. Closing Costs (Both Sales)	\$108,000.00
Total Claims	\$4,561,037.79
Balance	\$838,962.21

The Motion proposes to pay the secured claims of Stanislaus County Tax Collector and Mid Valley Services, Inc. in full but to reserve net proceeds while disputes regarding Summit and the Employment Development Department’s security interests are resolved. Specifically, Summit contends that the Property is collateral for the Debtor in Possession’s guarantee of the indebtedness of JEA2, LLC, an entity owned by the Debtor in Possession. Under the circumstances described in the motion, Summit’s liens will be extinguished by virtue of the doctrine of marshalling, equitable subordination, and counterclaims for usury. The Employment Development Department recorded its lien after the petition for relief was filed in this case in derogation of 11 U.S.C. § 362(a)(4). Accordingly, Summit and the Employment Development Department’s liens are subject to *bona fide* dispute, and the Property may be sold free and clear of their liens. 11 U.S.C. § 363(f)(4).

### **Commissions, Taxes and Closing Costs**

Debtor in Possession also seeks authority to pay a broker’s commission to Pearson Realty of 4% of the gross purchase price. An application to approve Pearson Realty’s employment will be filed shortly. In addition, the Debtor in Possession estimates that there will be escrow fees, recording fees, transfer taxes and other closing costs will not exceed 2% of the gross purchase price.

### **Summary of PSA**

The following is a summary of the material terms of the PSA:

- a. Mr. Foppiano, or his assignee, will purchase the Property for the gross of price of

1 \$3,700,000.00, all cash.

2 b. The Property is to be sold upon an “as is,” “where is” and “with all faults” basis.

3 c. The due diligence period has elapsed, and the sale is free of contingencies.

4 d. A deposit of \$2,000.00 was paid to escrow.

5 e. The date set for close of escrow is April 25, 2018, subject to extension by agreement  
6 of the parties.

7 f. The assets to be sold include any crop grown in 2018 and its proceeds; the Debtor in Possession expects that there will be none or only a nominal crop.

8 g. Upon closing of both sales, the aforesaid deposits totaling \$100,000.00 for potential  
9 sales of the Kellner Ranch and Newman Ranch will be released by way of cancelling the underlying  
10 escrows, whereupon the deposits will be used to pay the purchase price hereunder, as follows:  
\$50,000.00 to this sale; and \$50,000.00 to the Howard Ranch sale.

11 h. Real property taxes and special assessments; amounts payable under agreements  
12 encumbering the Property; and annual permit or inspection fees shall be pro-rated. The parties shall  
13 each pay one-half of the total cost of the owner’s title insurance policy, transfer taxes, closing fees  
14 charged by the title company, and any escrow fees. Debtor in Possession shall pay for a natural  
hazards zone disclosure report, the releases of any mortgage or other encumbrance, and a broker’s  
commission to Pearson Reality of 4% of the gross purchase price. Mr. Foppiano shall pay the costs  
for any title insurance required by his lenders, if any. Each party shall pay its own legal fees,  
accounting, and other professional fees.

15 The foregoing summary is provided for the convenience of the Court and parties in interest,  
16 and the terms of the PSA shall control in the event of any discrepancy.

17 **Good-Faith Finding**

18 This Motion also requests a determination that Mr. Foppiano is a good-faith buyer and is  
entitled to the protections of Bankruptcy Code § 363(m). Debtor in Possession intends to offer a  
19 declaration from Mr. Foppiano to support such a finding.

20 **Waiver of Stay of Enforcement**

21 Debtor in Possession requests that the provisions of Rule 62(a) of the Federal Rules of Civil  
Procedure and Rule 6004(h) of the Federal Rules of Bankruptcy Procedure that would otherwise stay  
22 the order approving the sale be waived under the circumstances.

23 **Tax Impacts**

24 Debtor in Possession does not anticipate any significant tax impacts from the proposed sale  
because of the substantial net operating loss carryovers he has accrued from prior tax years.

25 **PROPOSED BIDDING AND SALE PROCEDURES**

26 The Debtor in Possession requests approval of the following bidding and sale procedures:

27 a. The sale and opportunity for overbid shall be conducted on April 19, 2018, at 10:30  
28 a.m., at 501 “I” Street, 6<sup>th</sup> Floor, Courtroom 33, in Sacramento, California, or as soon thereafter as  
the Court may order.

1           b.       The auction shall be consolidated with the auction for the Howard Ranch, with parties  
2 submitting joint bids for both properties.

3           c.       A Bidder shall qualify by presenting the Debtor in Possession with proof that the  
4 bidder presently has liquid resources necessary to pay the gross sale price of both properties  
5 (\$5,400,000.00) plus the minimum initial overbid. Only qualified bidders may bid.

6           d.       Bids must be made in person and will not be accepted by telephone, facsimile or  
7 email.

8           e.       The minimum initial overbid shall be \$5,500,000.00 (approximately 102% of the  
9 purchase price). Thereafter, bids shall be made in minimum increments of \$50,000.00.

10          f.       Bids shall be made on terms equivalent to or better than the terms provided in the  
11 PSAs for the two sales, including terms with respect to due diligence, inspections, contingencies and  
12 time for closing.

13          g.       Bids shall be all cash and free of contingencies.

14          h.       The highest and best combined bid shall be reduced to a written agreement acceptable  
15 to the Debtor in Possession on or before April 20, 2018, subject to extension only by express written  
16 agreement of the Debtor in Possession.

17          i.       In the event that there are overbids and Mr. Foppiano is not the successful bidder, the  
18 Deposit shall be refunded to him within five (5) business days of the hearing hereon. The successful  
19 bidder shall deposit \$4,000.00 to escrow immediately.

20                   \* \* \*

21       NOTICE IS FURTHER GIVEN that a hearing to consider the Motion will be held on  
22 April 19, 2018, at 10:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable  
23 Ronald H. Sargis, Chief United States Bankruptcy Judge, at Robert T. Matsui United States  
24 Courthouse, 501 I Street, 6<sup>th</sup> Floor, Courtroom 33, Sacramento, California.

25       NOTICE IS FURTHER GIVEN that opposition, if any, to the Motion may be offered at the  
26 hearing; no written opposition to the motion is required. *See* L.B.R. 9014-1(f)(2).

27       NOTICE IS FURTHER GIVEN that parties may determine if this matter has been resolved  
28 without oral argument or whether the Court has issued a tentative ruling, and may view pre-hearing  
dispositions, by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day  
before the hearing. Parties appearing telephonically must view the pre-hearing dispositions prior to  
the hearing.

DATED: March 29, 2018

MACDONALD FERNANDEZ LLP

By: /s/ Matthew J. Olson

Matthew J. Olson,  
Attorneys for Debtor in Possession,  
JEFFERY EDWARD ARAMBEL